

REMARKS

Claims 1 and 4-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Gamache et al. (US 6,453,426, Microsoft). Claims 2 and 3 were objected to.

In response to the objection to claims 2 and 3, claim 2 has been rewritten in independent form to incorporate the subject matter of claim 1. Claims 2 and 3 should be found to be allowable. In addition, claim 8 is newly added, and is based on claim 6 and the subject matter of claim 2. Note that the whereby clause found in claim 6 is removed. Claim 8 should be allowable, as should dependent claims 9, 10 and 11, corresponding to claims 3, 4 and 5, respectively. In addition, claim 12 is newly added, and is based on claim 7 and the subject matter of claim 2. Note that the whereby clause found in claim 7 is removed. Claim 12 should be allowable, as should dependent claims 13, 15 and 15, corresponding to claims 3, 4 and 5, respectively. In addition, claim 16 is newly added, and is fully supported in the specification and drawings as filed. Claim 16 should be allowable, as should dependent claims 17, 18, 19 and 20. Note that support for claims 18, 19 and 20 can be found at least at page 6, lines 4-13. No new matter is added.

It should be noted that the re-writing of claim 1 into claim 2 has not also resulted in the cancellation of claim 1, and thus the full range of equivalents for all elements of claim 2 should remain intact (as should the full range of equivalents for all elements of claim 1).

Turning now to rejected claims 1 and 4-7, it is well settled that for a rejection to be made on the basis of anticipation: "all material elements recited in a claim must be found in one unit of prior art", Ex Parte Gould, BPAI, 6 USPQ 2d, 1680, 1682 (1987), citing with approval In re Marshall, 578 F.2d 301, 304, 198 USPQ 344, 346 (CCPA 1978).

In the instant rejection this is clearly not the case. The Examiner refers to col. 10, lines 1-4 and 14-16 of Gamache et al. as purportedly teaching the subject matter found in the independent claims.

Referring specifically to col. 9, line 65, to col. 10, line 21, what this portion of Gamache et al. actually teaches is the following:

"In accordance with one aspect of the present invention, the information needed to form and operate a cluster 60, i.e., the cluster operational data 100 (FIG. 3), is distributed among at least two distinct storages in the cluster 60. A first type of cluster operational data 100, the core boot data 102, is preferably stored in highly-reliable quorum storage 57 (FIGS. 4A-4C). A second type of operational data, the cluster configuration data 106, is preferably stored in a highly-reliable, but less expensive and/or higher performance storage mechanism, such as a mirror set of storage elements (disks) 108₁ (FIG. 4A-4C). These storage elements 108₁ may be connected to the cluster 60 of networked nodes 58₁ - 58_m in virtually any manner, but generally are connected the same way as the quorum storage, e.g., via the SCSI bus 56. Also, other types of storage elements and/or shared data, such as application data 108₂ and other resources and data 108₃ - 108_n may be connected. By separating the cluster configuration data 106 from the core boot data 102, a number of benefits are obtained, including reduced cost due to a lesser-amount of expensive and lower performance quorum storage 57 being needed, and better scalability due to better performance and a reduction in the total number of (relatively slow) updates needed to the quorum storage mechanism 57."

It is respectfully submitted that **this portion of Gamache et al. appears to discuss simply an *a priori* allocation of different types of data to different types of storage devices/units.** It is not seen where there is any suggestion of, as in claim 1, at least the subject matter of:

"(b) identifying any of said plurality of storage resources and any volume thereof that contains said second data set; and

(c) forming an eligible volume list for selection of said first storage resource according to a policy such that any storage volume identified by step (b) is excluded from said list" (emphasis added).

Instead, all that Gamache et al. teach is that the cluster operational data 100 is "distributed among at least two distinct storages in the cluster 60", where a first type of cluster operational data, the core boot data 102, "is preferably stored in highly-reliable quorum storage 57" while the second type of operational data, the cluster configuration data 106, "is preferably stored in a highly-reliable, but less expensive and/or higher performance storage mechanism, such as a mirror set of storage elements (disks) 108₁". At least the highlighted subject matter of claim 1 above is not

S.N.: 10/072,522
Art Unit: 2187

seen to be expressly disclosed or suggested by Gamache et al.

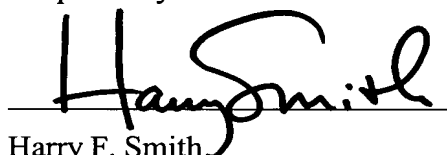
Further, it is not clear what the disclosure at col. 9, lines 26, 27 and 44-51 (which appears to pertain to group ownership negotiations between nodes) has to do with claims 4 or 5.

In that claim 1 is clearly not anticipated by Gamache et al., then the independent claims 6 and 7 are not anticipated by Gamache et al.

The Examiner is respectfully requested to reconsider and remove the rejection of claims 1 and 4-7 under 35 U.S.C. 102(e) as being anticipated by Gamache et al., and to allow these claims along with claims 2, 3 and 8-20.

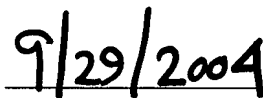
An early notification of the allowability of claims 1-20 is earnestly solicited.

Respectfully submitted:



Harry F. Smith

Reg. No.: 32,493



Date

Customer No.: 29683

HARRINGTON & SMITH, LLP

4 Research Drive

Shelton, CT 06484-6212

Telephone: (203)925-9400

Facsimile: (203)944-0245

email: hsmith@hspatent.com

S.N.: 10/072,522
Art Unit: 2187

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. BOX 1450, Alexandria, VA 22313-1450.

9/29/2004
Date

Claine F. Mann
Name of Person Making Deposit